



Return to School Update

Prepared for the Education Interim Committee | September 15, 2021

This document provides a summary of legislation from the 2021 General Session and the 2021 First Special Session that addresses ongoing issues related to schools and the COVID pandemic – including public education and higher education. It also provides information about a U.S. Department of Education Office of Civil Rights investigation into Utah’s statutes on face covering requirements in public schools and active Test to Stay events.

Relevant Legislation

Test to Stay program

[S.B. 107](#) In-person Instruction Prioritization (2021 General Session)

The bill creates a Test to Stay program with the following provisions:

- Local education agencies (LEA) are required to implement schoolwide COVID testing if a school reaches a threshold of positive cases so the school can continue offering in-person instruction.
- Students cannot attend in person when a school is in Test to Stay unless the student tests negative.
- Case thresholds
 - Schools with 1,500 students or more: 2% of the student body.
 - Schools with fewer than 1,500 students: 30 cases.
- The Utah Department of Health is required to provide testing assistance to LEAs.
- LEAs must provide remote learning options for students who do not wish to attend school in person.

In addition, this bill requires institutions of higher education to offer at least 75% of their courses through in-person instruction.

“Endgame” bill

[H.B. 294](#) Pandemic Emergency Powers Amendments (2021 General Session)

This bill ended the statewide mask mandate and terminated emergency declarations and public health orders related to the COVID pandemic once the state reached specific thresholds. State or local health department orders about public health safety measures in a K-12 school were allowed to remain in place through July 1, 2021.

Local health departments are allowed to issue public health orders requiring individuals to wear face coverings, with approval from the county legislative body. This includes health orders requiring students to wear masks in public schools.

Mask mandates in schools

[H.B. 1007](#) Face Covering Requirements (2021 First Special Session)

This bill prohibits institutions of higher education, the board of higher education, the state board of education, the state superintendent, local education agencies, and schools from requiring individuals to wear face coverings in school facilities or school events. However, local health departments are allowed to mandate face coverings in public schools with approval from the county legislative body (see [H.B. 294](#), 2021 General Session).

Other Updates

U.S. Department of Education Office for Civil Rights investigation

On August 31, 2021, the U.S. Department of Education Office for Civil Rights (OCR) [notified](#) the Utah State Board of Education (USBE) that they opened a civil rights investigation into whether Utah's statutes on face covering requirements in public schools are preventing LEAs from meeting the needs of students with disabilities in violation of federal law. In addition to Utah, OCR has opened investigations in [four other states](#).

Schools with active Test to Stay events

According to the [Utah Department of Health's school-associated cases dashboard](#) and [local news reports](#), at least two schools have currently reached the threshold for positive COVID cases and have implemented Test to Stay events with required schoolwide testing.

The school-associated cases dashboard provides information about the number of COVID cases in schools, and the department recently started using color coding to identify schools that are approaching or have reached the case threshold for required testing. The department's Test to Stay guidance is available on [their website](#).